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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.W. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. C.E., et al., Defendants and Appellants.	E062300 (Super.Ct.No. RIJ120366) OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant A.W.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant C.E.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant R.R.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Anna M. Marchand, Deputy County Counsels, for Plaintiff and Respondent.

Defendant and appellant A.W. (Mother) appeals from the juvenile court's order terminating her parental rights as to her six-year-old daughter D.W. and three-year-old son J.W. On appeal, Mother argues the juvenile court erred in failing to find the "beneficial parental relationship" exception to termination of parental rights applied.

Defendants and appellants C.E. (father of D.W.) and R.R. (father of J.W.) appeal from the juvenile court's order summarily denying their Welfare and Institutions Code[1] section 388 petitions.

Having carefully considered the arguments advanced by Mother and the fathers, we reject their claims and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND[2]

The family came to the attention of the Riverside County Department of Public Social Services (DPSS) on August 11, 2010, when an immediate response referral was

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[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] The factual and procedural background is taken from this court's nonpublished opinion in Mother's prior appeal (*In re D.W.* (Feb. 17, 2015, E061069) [nonpub. opn.]), unless otherwise noted.

received alleging general neglect/caretaker absence of then two-year-old D.W. Mother had a history of abusing drugs and had left the child with the maternal grandmother. The maternal grandmother and her live-in boyfriend were involved in a domestic violence incident, resulting in the maternal grandmother's arrest.

D.W.'s father C.E.'s whereabouts were unknown and Mother was in custody. C.E. had not been present at D.W.'s birth in August 2008 and was not listed on her birth certificate. However, once C.E.'s mother found out about D.W., she went to the hospital to visit D.W. C.E. had not been involved in D.W.'s life and resided in Georgia on and off with his mother.

D.W. was being cared for by the maternal grandmother's best friend at the time of the maternal grandmother's arrest. D.W. was taken into protective custody.

Mother had a history with child protective services. She also had a criminal history relating to her drug abuse, as well as past mental health issues. Mother had admitted to using methamphetamine on September 15 and 24, 2010.

On September 20, 2010, a petition was filed on behalf of D.W. pursuant to section 300, subdivisions (b) (failure to protect) and (g) (no provision for support).

DPSS had made several attempts to contact C.E. in September and October 2010, and had successfully contacted C.E.'s mother on October 14, 2010. C.E.'s mother had confirmed DPSS had an accurate telephone number for C.E. and had agreed to inform C.E. DPSS was attempting to contact him. C.E.'s mother also noted that C.E. petitioned

a court to seek custody of D.W.[3] C.E., however, had contact with Mother for the purpose of exchanging pictures and information regarding D.W.

At a detention hearing, the court found a prima facie case for juvenile court jurisdiction under section 300 and placed D.W. in the temporary custody of DPSS. The court ordered services and supervised visits to the parents.

Mother had been visiting D.W., and the visits appeared to be going well. Mother had also been referred to services and had several intake appointments scheduled for inpatient substance abuse programs.

At the jurisdictional/dispositional hearing on November 2, 2010, the juvenile court found the section 300, subdivision (b) allegations in the petition true, and the subdivision (g) allegations not true. D.W. was declared a dependent of the court, and Mother was provided with reunification services. Mother's case plan required Mother to participate in counseling, a parenting program, a substance abuse program, and random drug testing. C.E. was not provided with reunification services. C.E.'s mother attended the jurisdictional/dispositional hearing. And, on November 10, 2011, C.E.'s mother had requested information and interests in becoming D.W.'s legal guardian. The social worker thereafter attempted to contact C.E.'s mother several times and had spoken with her once but thereafter had not received further contact from C.E.'s mother.

[3] The record does not contain evidence showing any other judicial proceedings regarding D.W. besides the underlying juvenile dependency proceeding.

On March 29, 2011, D.W. was placed with her maternal great-aunt and her husband. D.W. was attached to her relative caregivers and had adjusted well to her new home. Mother was incarcerated during the six-month reporting period, but she had been participating in parenting, substance abuse, and anger management programs while incarcerated. She had also been able to visit D.W. twice a week beginning on February 3, 2011. Mother was scheduled to be released on April 17, 2011. While incarcerated, Mother completed a parenting program and a substance abuse program. C.E. had not made any contact with DPSS.

At the May 2, 2011 six-month review hearing, the court continued Mother's services for an additional six months.

Since Mother's release from custody, she had been transient and residing with various friends. She had also failed to maintain regular contact with DPSS and was evasive about her living situation; and, despite the social worker's encouragements, she had failed to participate in counseling and drug testing. She had failed to demonstrate an ability to maintain stability and long term sobriety in an independent setting. Mother also advised the social worker that she planned on resuming her relationship with her boyfriend once he was released from prison. DPSS counseled Mother about her need to be around influences that would encourage her to remain clean and stable. On October 11, 2011, Mother was arrested on an outstanding warrant and remained incarcerated until November 14, 2011.

C.E. had made no contact with DPSS or with D.W. In early November 2011, C.E.'s mother had informed DPSS that C.E.'s whereabouts were unknown. Correspondence mailed to C.E. had been undeliverable.

Meanwhile, D.W. continued to reside with her relative caregivers and was thriving in the home. She appeared happy and well-adjusted and was receiving excellent care in a loving, stable, and nurturing home. She was "very attached" to her caregivers and looked to them for comfort. D.W.'s relative caregivers had shown a strong commitment in ensuring D.W.'s needs were met and had expressed a commitment in providing her with a stable and permanent home including adoption. Mother had sporadically visited D.W. and reported that she was pregnant with her second child. Mother did not visit D.W. at all in October 2011.

The contested 12-month review hearing was held on December 6, 2011. At that time, the court terminated Mother's services and set a section 366.26 hearing.

Sometime after the 12-month review hearing, Mother entered a residential drug treatment program in Orange County as ordered through the criminal court. Mother completed the program on March 7, 2012, and returned to Riverside County but failed to make contact with DPSS and D.W. Her whereabouts were unknown until she filed a section 388 petition to change court order on April 4, 2012. In her petition, Mother requested the section 366.26 hearing be vacated and that she be provided with an additional six months of services. In support, Mother attached documentation that she had completed a substance abuse treatment program, an anger management program, and

a GED training program. She also asserted that she had tested negative for controlled substances and was regularly attending Narcotics Anonymous (NA)/Alcoholics Anonymous (AA) meetings and that she had a sponsor. Mother further claimed that she had a strong bond with D.W.; that D.W. loved her; and that the visits were appropriate. DPSS objected to the change in court order because Mother had not participated in counseling, was unemployed, appeared to be transient, and did not appear to manage sobriety absent a structured environment.

On August 22, 2012, the juvenile court granted Mother's section 388 petition as long as Mother obtained a suitable residence, was available to DPSS, and participated in her amended case plan. Mother's amended case plan required Mother to obtain suitable housing, randomly drug test, attend counseling, and participate in a parenting education program and a substance abuse treatment program.

Mother gave birth to her second child, J.W., in March 2012, and reported the father was R.R. However, a father was not identified on J.W.'s birth certificate. Mother had been providing DPSS with false addresses as to her residence and evading contact with DPSS. By September 2012, DPSS learned that Mother was residing with the maternal grandmother. On September 6, 2012, the social worker was informed that Mother and the maternal grandmother had both tested positive for methamphetamine. Mother admitted to relapsing and using methamphetamine on three to four different occasions before enrolling in a substance abuse treatment program. J.W. was taken into protective custody and placed with his half sibling D.W.

On August 22, 2012, a social worker spoke with J.W.'s father R.R. via telephone. However, on September 10, 2012, R.R. did not answer his telephone and his telephone would not accept any new messages. DPSS had mailed him a notice of the proceedings.

On September 12, 2012, DPSS filed a petition on behalf of the child pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). J.W. was formally detained on September 13, 2012. On October 10, 2012, the juvenile court found the allegations in the petition true and declared J.W. a dependent child of the court. Mother was provided with reunification services and was participating in her services. J.W.'s father was denied services.

On September 19, 2012, the social worker left a voice message for R.R. On October 1, 2012, Mother reported that she recently spoke with R.R. about J.W. and R.R. told her he did not believe he was J.W.'s father and he did not want anything to do with DPSS. DPSS had attempted to contact R.R. at his home and had left an additional voice message for him. R.R. had not made any contact with DPSS.

By February 25, 2013, Mother had been testing negative for controlled substances, regularly attending her therapy sessions, and making progress at addressing her issues. She completed two parenting programs and had been attending an intensive outpatient substance abuse program. Mother also had maintained a suitable residence; however, DPSS was concerned with Mother residing with the maternal grandmother who continued to abuse controlled substances. Mother informed DPSS that her plan was to secure her own residence once she received funding to facilitate the move. Mother also

regularly visited the children and was observed to be appropriate, loving, and nurturing in her interactions with the children. Her visits had progressed to unsupervised eight hour day visits two times a week, but DPSS had not authorized overnight visits due to the maternal grandmother continuing to reside in the home. Neither D.W.'s father nor J.W.'s father were involved in the lives of their children or the dependency proceedings.

The combined 18-month review hearing as to D.W. and the six-month review hearing as to J.W. was held on February 25, 2013. At that time, the juvenile court placed the children in Mother's care on family maintenance status on the condition that the maternal grandmother not reside in the home.

DPSS continued to be concerned that the maternal grandmother was residing with Mother. In addition, Mother had tested positive for methamphetamine in April 2013 and admitted to relapsing. Following the relapse, on June 27, 2013, Mother and the children moved into a residential substance abuse treatment center. Mother, however, was discharged from the residential program on July 22, 2013, after she fought with another resident. Mother then located another program and the children returned to their former relative caregivers.

On August 26, 2013, the juvenile court continued Mother's family maintenance services for an additional six months. At that time, the court also ordered Mother to participate in a psychological evaluation. However, on October 3, 2013, DPSS detained the children and filed a section 387 petition on October 7, 2013. The fathers were provided with telephonic notice of the detention hearing. The children were formally

detained on October 8, 2013. DPSS had attempted further contact with the fathers but neither father responded to any of DPSS's efforts to speak with them.

Mother continued to abuse drugs and violated the terms of her probation. She allowed a man who had an extensive criminal background and an open dependency case to move in with her and care for the children at times. In addition, a probation search of the residence revealed marijuana, drug paraphernalia, including several syringes, and two baggies of crystal methamphetamine.[4] As a result, on October 3, 2013, Mother was arrested for associating with a known drug user.

The children were returned to their prior relative caregivers. D.W. reported that she had been a little afraid of Mother's friends and wanted to remain living with her relative caregivers. The caregivers again expressed their desire to provide a permanent and stable home for the children.

Mother was released from custody on November 5, 2013, and her probation was reinstated. Her whereabouts were unknown until November 18, 2013. Mother was resistant to return to counseling, and she believed DPSS was too restrictive about the persons with whom she associated. On December 3, 2013, Mother reported that she had been sober for 164 days and was attending NA/AA meetings. She had also reentered the Family Preservation Court Program (Family Program) at the program's level Phase I.

[4] Mother was placed on probation in San Bernardino County on December 14, 2010. Her probation was scheduled to expire on March 17, 2014.

The children continued to reside with their relative caregivers and adjusted "extremely well." They showed no signs of emotional distress, and, in fact, J.W. had appeared more relaxed and secure in his caregiver's care. When visits with Mother had resumed, J.W. initially appeared apprehensive when he saw Mother and had difficulty going to her and preferred to stay near or be held by his caregiver. D.W. had desired to return to Mother as well as to stay with her caregivers, and she appeared concerned with Mother finding a home.

On December 17, 2013, the juvenile court found the allegations in the section 387 petition true and removed the children from Mother's custody and care. The court terminated Mother's family maintenance services and determined that Mother had exceeded the statutory time for further reunification services. The court set a section 366.26 hearing.

The prospective adoptive relative caregivers (caregivers) were interested in adopting the children and providing them with a stable, loving, and nurturing home. Both children were happy, well-adjusted, and thriving in their caregivers' home. D.W. was conflicted about being separated from her mother and had cried over a belief that her mother did not want her anymore. Nonetheless, D.W. was closely bonded to her caregivers, their children, and her brother, and reported that she wanted to remain living in her caregivers' home. J.W. was strongly attached to both his sister and caregivers, and he showed signs of separation anxiety when his caregivers were out of sight. The caregivers were open to the children having continued contact with their parents.

On February 13, 2014, DPSS had located R.R. On March 6, 2014, he had requested a paternity test. The paternity testing showed that R.R. was J.W.'s biological father.

On April 15, 2014, Mother filed a section 388 petition with supporting documentation, alleging that she had changed her circumstances and that the change order was in the children's best interest. In support, Mother claimed that she had been participating in the Family Program and had been recently advanced to Phase III; that she had been testing negative for drugs; that she had obtained suitable housing for herself and the children; that she had an NA sponsor; and that she had completed a parenting program. She further asserted that she had maintained regular visitation with the children; that the children enjoyed the visits with her; that the visits were appropriate; and that she had a strong bond with the children and believed it was in the children's best interest to be reunited with her.

The initial selection and implementation hearing was held on April 16, 2014. R.R. made his first appearance in the juvenile court on that day, and was provided with monthly, supervised visits with J.W. The juvenile court also found R.R. to be J.W.'s biological father. In addition, on April 18, 2014, the juvenile court summarily denied Mother's section 388 petition, checking the box stating "[t]he proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child[ren]."

On April 29, 2014, Mother appealed from the juvenile court's denial of her section 388 petition. While her appeal was pending (*In re D.W., supra*, E061069), on July 15, 2014, Mother filed another section 388 petition with supporting documents, asking the juvenile court to grant her additional services. The juvenile court denied that petition on September 23, 2014.

Mother was provided with monthly, supervised visits with the children. She had continued to visit the children once per month supervised by the children's caretakers or the social worker. The visits appeared to go well and no problems were noted.

D.W.'s father C.E. had continued to reside in Georgia. It was reported that C.E. had a transient lifestyle and a criminal history involving several incarcerations. He had failed to maintain contact with DPSS. C.E. was not provided with any visits with D.W. but the court had authorized photographs and letters be sent to him. C.E. had not made any inquiries about D.W.

J.W.'s father R.R. informed the social worker that he had moved frequently due to his construction job. He was currently residing in Indio with his girlfriend and their four-month-old daughter. R.R. noted that his four-month-old daughter is his fifth child and that he had " 'four baby mama's.' " R.R. had his first supervised visit with J.W. on May 5, 2014. Initially, the child was hesitant and did not express any emotion when he saw R.R. However, as the visit progressed, J.W. had responded positively to the attention provided by R.R. R.R. was appropriate in his interaction with J.W. and had brought age appropriate toys for the child. R.R. had additional visits with J.W. in June and July 2014,

and readily engaged in play with J.W. J.W. again had appeared guarded and expressed no emotion, but readily engaged in play with R.R. and appeared to enjoy the visits. Nonetheless, J.W. had called out for "mama" and "dada," referring to his caregivers, and appeared to be confused and looking for his caregivers.

D.W. expressed worry about whether her mother had a house. Nonetheless, she was thriving in her caregiver's home and was very bonded to her caregivers and to her half brother. She was six years old, had completed kindergarten and appeared to be happy and well-adjusted. She referred to her caregivers as "Mommy" and "Daddy" and "Mama" and "Dada." She was referred for individual counseling and/or play therapy, however, as she appeared to be emotionally affected by the removal from Mother's care. J.W. was also thriving in his caregiver's home and was bonded to his caregivers and D.W. He appeared to be happy and well-adjusted and there were no emotional or developmental concerns. The caregivers had maintained their commitment in providing for the children's needs as well as a permanent, stable, and loving home for the children. The caregivers had served as role models for the children since shortly after their births. The children viewed their caregivers as maternal and paternal figures as well as a source of stability, even though Mother had maintained visitation with them.

On September 23, 2014, C.E. filed a section 388 petition, requesting that the court vacate the section 366.26 hearing and provide him with reunification services. C.E. claimed that he had contacted DPSS on November 12, 2013, to requests visits and reunification services; that he had a stable job and residence; that he was married with a

two-year-old son; and that even though he was originally unavailable to D.W. due to his then instability, he had desired to establish a relationship and provide for D.W. The juvenile court summarily denied C.E.'s section 388 petition, noting the proposed change in order did not promote the best interest of the child.[5]

On October 31, 2014, R.R. filed a section 388 petition, requesting that the court grant him reunification services and transition J.W. to his care and custody. He argued that for the past six months, he had maintained contact with J.W., had established a bond with him, made all the court appearances, and had a stable home and job.

A hearing on R.R.'s section 388 petition was held on November 4, 2014. Following argument, the juvenile court denied R.R.'s petition, finding R.R. cannot "meet the best interest prong even on the prima facie showing of the petition with [J.W.'s] current circumstance." The juvenile court thereafter proceeded to the contested section 366.26 hearing. At that time, Mother and R.R. testified.

Mother, in relevant part, testified that at visits, both children run up to her, hug her, and kiss her. They also call her "mom" and D.W. starts getting somewhat sad and distant when the visits are about to end. J.W. did not realize when the visits were about to end until she placed him in the car. Mother believed that she had a significant and "unique" bond with both children and that the bond "keeps getting stronger." Mother

[5] In February 2015, this court affirmed the juvenile court's order denying Mother's first section 388 petition.

acknowledged that the children are well taken care of by their caretakers and that she planned on maintaining herself in the children's lives.

R.R. testified about his relationship with J.W. He asserted that he had maintained visits with J.W. since April 2014; and he felt J.W. still did not know him because DPSS was not allowing him enough time with his son. However, he believed he had a bond with J.W. During visits, R.R. stated that he played with toys with J.W.; that he read to J.W.; that he tended to J.W.'s needs such as changing his diaper; and that he took photographs of J.W. R.R. acknowledged that he had seen his son when J.W. was a month or two months old; and that he did not attempt to establish paternity until 2014.

Mother, C.E., and R.R. all requested guardianship for the children while DPSS urged a permanent plan of adoption. Following argument, the juvenile court found the children adoptable and terminated parental rights, finding no exception to termination applied. This appeal followed.

II

DISCUSSION

A. *Mother's Appeal*

Mother contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A), did not apply to preclude the termination of parental rights.[6]

[6] C.E. has joined and adopted Mother's factual summary and substantive arguments. R.R. has also adopted the statements of the case and fact as set forth in Mother's and C.E.'s opening briefs.

After reunification services are denied or terminated, " 'the focus shifts to the needs of the child for permanency and stability.' " (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

" 'Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.' " (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; see § 366.26, subd. (c)(1).) " 'Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.' " (*In re Celine R.*, *supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where "[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B), italics added) because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (*Id.*, subd. (c)(1)(B)(i); see *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.)

Here, the record reflects Mother maintained regular visitation with the children, although her visits were less frequent while she was incarcerated or in an out-of-county treatment program. Since Mother's visits were mostly regular, we focus on the issue of whether the children would benefit from continuing the relationship with Mother.

In deciding whether the parent-child beneficial relationship exception applies, "the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Ibid.*) The parent-child relationship must "promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*Ibid.*)

The parent-child relationship "exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) "[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent." (*Id.* at p. 1350.) Even a "loving and happy relationship" with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

"The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child's need for a stable and permanent home that would come with adoption." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) "[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact." (*Ibid*.) "Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction." (*Ibid*.) "[I]t is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350; see *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re C.B.* (2010) 190 Cal.App.4th 102, 133-134; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) A juvenile court's finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence

standard and in part for abuse of discretion. The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court's determination that the relationship does or does not constitute a "compelling reason" (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) A juvenile court's ruling on whether there is a "compelling reason" is reviewed for abuse of discretion because the court must "determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, italics omitted.)

Mother argues that substantial evidence supports the conclusion that a beneficial parental relationship existed. However, since it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence compels such a finding as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is "typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*Ibid.*) When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether

substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [Mother's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such character and weight as to leave no room for a judicial determination that it was insufficient to support a finding [in Mother's favor].' [Citation.]" (*Ibid.*) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. (*In re Bailey J., supra,* 189 Cal.App.4th at p. 1314.)

Here, there is no evidence to show the children had a "substantial, positive emotional attachment" to Mother. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; see *In re S.B.* (2008) 164 Cal.App.4th 289, 299 (*S.B.*).) D.W. had lived with Mother for her first one and one-half years and for another brief period of six or seven months. J.W. had been in her care for about six months before he was placed with his half sister. By the time of the section 366.26 hearing on November 4, 2014, D.W. was six years old and J.W. was 32 months old. They had resided with their caretakers for most of their young lives. Although Mother had visited the children, showed her commitment and love to the

children, and the visits went well, the evidence regarding Mother's visitation in no way showed that she occupied a parental role in the children's lives. Rather, Mother's interactions with the children appeared to be more akin to a friendly visitor or non-parent relative, such as an aunt. It does not appear the children were particularly upset when the visitation sessions ended, or that they were particularly anxious to visit Mother.

Even if Mother had established the existence of a beneficial parental relationship, she cannot show the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the children as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) " ' "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' " (*Id.* at p. 319.)

Here, Mother did not introduce any evidence showing the children would be greatly harmed by the termination of her parental rights. The children were strongly bonded to their relative caretakers, whom they had known since birth, and saw them as their parents. The caretakers loved the children as their own and were committed to providing them with a stable, loving home. They were attentive to the children's

developmental, educational, and emotional needs, and the children looked to them for attention, comfort, and security. There was no evidence to show that the children were deeply upset or always cried following their visits with Mother. Rather, the record indicates that the children were attached, happy, and well bonded to their caretakers and that they were thriving in their home. There was no evidence whatsoever that the children would suffer great detriment if parental rights were terminated. Consequently, the juvenile court could reasonably conclude that termination of Mother's parental rights would have no detrimental impact on the children.

Mother asserts the juvenile court erred because the children referred to Mother as "mommy," said they loved her, ran up to Mother and hugged her at visits, and D.W. was sad at the end of the visits. We agree there is evidence supporting a finding of a positive relationship between Mother and the children, especially D.W.; however, there is also evidence supporting a reasonable conclusion that the children would gain a greater benefit from being placed in a permanent adoptive home. While Mother and the children had positive interactions, their bond did not rise to the level of a parent and child.

Mother relies on *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*) in support of her position. However, that case is distinguishable. *Brandon C.* is a social services agency's appeal from an order for guardianship rather than adoption based on the beneficial parental relationship exception. (*Id.* at p. 1533.) In that case, the social services agency failed to provide information to the court about the quality of the visits between the mother and her children. Rather, the reports simply described "the regularity

of the visits, with no evaluation of their success." (*Id.* at p. 1538.) Thus, the only evidence before the juvenile court concerning the mother's relationship with her children was the testimonies of the mother and the paternal grandmother that there was a close bond, and that a continuation of contact would be beneficial to the children. (*Id*. at p. 1537.) The appellate court affirmed the juvenile court's finding that the beneficial parental relationship exception applied based on the children's emotional attachment to their mother. (*Id.* at pp. 1534-1538.) The question before us, however, is whether the juvenile court abused its discretion by finding the exception not applicable. *Brandon C.* does not provide any guidance on that issue.

Mother also argues her case is analogous to *In re Amber M.* (2002) 103 Cal.App.4th 681 (*Amber M.*), which held that the juvenile court erred by failing to find that the parental relationship exception applied. (*Id*. at pp. 689-691.) The evidence in *Amber M.*, however, was strikingly different from the evidence here. There, a psychologist had concluded that the mother and the children shared " 'a primary attachment' " and a " 'primary maternal relationship' " and that " '[i]t could be detrimental' " to sever their relationship. (*Id.* at p. 689.) One child's therapist believed the child had "a strong bond" and it was "important" that the relationship continue. (*Ibid.*) A court-appointed special advocate opposed adoption "due to the bond and love between Mother and the children . . . ." (*Id.* at p. 690.) Finally, the social worker, who was "the only dissenting voice among the experts," had done "a perfunctory evaluation"

of the relationship and had improperly considered the mother's current inability to provide a home for the children. (*Id.* at p. 690.)

Mother also likens this case to *S.B.*, *supra*, 164 Cal.App.4th 289. In that case, the father had been the child's primary caregiver for three years. (*Id*. at p. 298.) The father contested the termination of his parental rights following the removal of the child due to both parents' substance abuse. During the reunification period, the father had visited the child three times per week, and the child became upset when her visits with the father ended. (*Id*. at p. 294.) The child stated that she wanted to live with the father, and the child told the father that she loved him and missed him. (*Id.* at p. 295.) During visits, the father had " 'demonstrate[d] empathy and the ability to put himself in his daughter's place to recognize her needs.' " (*Id.* at p. 294.) A bonding study had been conducted, and the doctor concluded that "there was a potential for harm to S.B. were she to lose the parent-child relationship." (*Id.* at p. 296.) The social worker even admitted that there would be "some detriment" to the child if parental rights were terminated. (*Id.* at p. 295.) The juvenile court found that the father and the child had " 'an emotionally significant relationship. . . .' " (*Id.* at p. 298.) The appellate court held that under the circumstances, the juvenile court had erred by finding that the beneficial parent-child relationship exception did not apply. "The record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be greatly harmed by the loss

of her significant, positive relationship with [her father]. [Citation.]" (*Id*. at pp. 300-301.) There is no similar evidence in this case.

Moreover, the same court that decided *In re S.B.* later warned that it was an extraordinary case and must be viewed in light of its particular facts. The court emphasized that the opinion "does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J*. (2009) 175 Cal.App.4th 922, 937; see *In re C.F*. (2011) 193 Cal.App.4th 549, 557-559.) Rather, there must be evidence that the relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents" and that severance of the relationship "would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed." (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Here, there simply is no such evidence.

In sum, the record supports the juvenile court's determination that the beneficial parent-child relationship exception did not apply in this case.

B. *Fathers' Appeals*

Both C.E. and R.R. assert that the juvenile court erred in summarily denying their section 388 petitions without holding an evidentiary hearing because they met the prima facie burden justifying a hearing on their respective petitions. C.E. further claims that denying his petition without a hearing violated his Constitutional right to due process.

Section 388, subdivision (a), permits anyone having an interest in a dependent child to petition the juvenile court for a hearing to change, modify or set aside a previous order on the ground of changed circumstances or new evidence. A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) The juvenile court's ruling will not be disturbed on appeal unless the court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) " ' "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]' [Citations.]" (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) "It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion . . . ." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

The juvenile court shall order that a section 388 hearing be held if it appears that the child's best interest may be promoted by the proposed change of order. (§ 388, subd. (d).) The court may deny the section 388 petition ex parte—i.e., without a hearing—if the petition does not state a change of circumstance or new evidence that

might require a change of order or fails to demonstrate that the requested modification would promote the child's best interest. (Cal. Rules of Court, rule 5.570(d).)

Section 388 petitions "are to be liberally construed in favor of granting a hearing to consider the [petitioner's] request. [Citations.] The [petitioner] need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) "There are two parts to the prima facie showing: The [petitioner] must demonstrate (1) a genuine change of circumstances or new evidence, *and* that (2) revoking the previous order would be in the best interests of the children. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250 (*Anthony W.*), italics added.) The prima facie showing may be based on the facts in the petition and in the court file. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 463.) "The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

General or conclusory allegations are not enough to make a prima facie showing under section 388. (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593 (*Edward H.*).) The petition must include "specific allegations describing the evidence constituting the proffered changed circumstances or new evidence." (*Ibid.*) "Successful petitions have included declarations or other attachments which demonstrate the showing the petitioner will make at a hearing of the change in circumstances or new evidence." (*Anthony W.*, *supra*, 87 Cal.App.4th at p. 250.) Indeed, "[i]f a petitioner could get by with general,

conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the decision to grant a hearing on a section 388 petition would be nothing more than a pointless formality." (*Edward H.*, at p. 593.) If the petition fails to make the required prima facie showing, summary denial of the petition without a hearing does not violate the petitioner's due process rights. (*In re Angel B.*, *supra*, 97 Cal.App.4th at pp. 460-461.) Having reviewed the record as summarized above, we conclude the juvenile court properly exercised its discretion by summarily denying the fathers' section 388 petitions.

It appears the juvenile court here denied the fathers' section 388 petitions because they had failed to establish that the proposed change would be in the children's best interest. The ruling is not an abuse of discretion. Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697.) Neither father had been granted reunification services, primarily because they had not availed themselves to DPSS, despite DPSS's efforts to contact them. C.E. claims that there was evidence showing he had attempted to gain custody of D.W. before November 2010. However, C.E. did not provide any evidence showing he had attempted to obtain custody of D.W. or contact DPSS, even after C.E.'s mother had informed C.E. of the dependency proceeding. R.R. was aware of J.W. when the child was one or two months old, and had spoken with a social worker in August 2012. However, he had avoided DPSS's multiple attempts to contact him and on October 1, 2012, DPSS was informed that R.R. was not interested in the dependency

proceedings. And, after DPSS had again located R.R. on February 13, 2014, R.R. had requested a paternity test in March 2014 and did not begin visiting J.W. until May 5, 2014. Thereafter, even with the confirmation of paternity, R.R. did not request reunification services until October 31, 2014.

By the point of a section 366.26 hearing to select and implement a child's permanent plan, however, the interests of the parent and the child have diverged. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.) Therefore, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability. (*In re Marilyn H.*, *supra,* 5 Cal.4th at p. 309.) "[I]n fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

C.E. and R.R. failed to make a prima facie showing that providing them with reunification services with the goal of returning their respective child to their respective care would serve the best interest of their child. The record clearly shows that the children were very bonded to their caregivers; and that they were happy, well-adjusted, and thriving in their caregivers' home. D.W. at two years of age had been placed with the caregivers when she was initially removed from Mother's care on March 29, 2011, and again on October 3, 2013, after briefly returning to Mother's care on family

maintenance services. D.W. was closely bonded to her caregivers, their children, and her brother, and reported that she wanted to remain living in her caregivers' home. J.W. was placed with the caregivers when he was around six months old and was strongly attached to both his half sister and caregivers, and showed signs of separation anxiety when his caregivers were out of sight. The caregivers were committed to providing the children with a safe, loving, stable, and nurturing home.

By the time C.E. filed his section 388 petition on September 23, 2014, D.W. had been in a stable, prospective adoptive home for almost four years—most of her young life. And, by the time R.R. filed his section 388 petition on October 31, 2014, J.W. had been in his prospective adoptive home for almost two years—again for most of his young life. The children were doing very well, and had bonded with the family as well as each other. C.E.'s and R.R.'s ability to successfully achieve unsupervised visitation and to then reunify with their respective child was extremely uncertain by comparison.

C.E. had not even visited D.W., in part due to him residing in Georgia, and merely alleges that D.W. *may* benefit from knowing and living with him and his youngest son, her half sibling. R.R. asserts that providing him with reunification services would benefit J.W. because he had participated in visits with J.W., the visits were not detrimental to J.W., he had been appropriate with his son during the visits, and his son enjoyed the visits. However, neither father had been in his child's life significantly to satisfy their burden of proof. R.R. had a very limited relationship with J.W., and C.E. did not have any bond with D.W. Furthermore, their arguments supporting the best interest prong

merely amount to general, conclusory allegations. Meanwhile, the children had lived with their caregivers most of their young lives; referred to them as "Mommy" and "Daddy"; and looked to them for support and comfort. Furthermore, D.W. and J.W. were very bonded to each other; D.W. had stated that she wanted to remain living with her caregivers; and J.W. had suffered separation anxiety if separated from his caregivers, and called out to them during a visit with R.R.

The children's interest in the permanency and stability they had found outside their parents' care was paramount. Neither father can show that providing services or returning his respective child to his custody would benefit his child in any way. As previously noted, "After the termination of reunification services, . . . 'the focus shifts to the needs of the child for permanency and stability' [citation] . . . ." (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Those needs could best be met by letting the children be adopted by their caregivers.

In sum, it is not in the children's best interest for permanence to be delayed for an unknown or indefinite period of time, with no certainty or even likelihood C.E. or R.R. could progress to the point of obtaining custody of his child. Under these circumstances, we cannot conclude the juvenile court abused its discretion in summarily denying C.E.'s and R.R.'s section 388 petitions without a full evidentiary hearing.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.